

WARREN WHEELER

IBLA 81-840

Decided August 3, 1981

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. AZ 3833 (952).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

APPEARANCES: Warren Wheeler, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Warren Wheeler has appealed the Arizona State Office, Bureau of Land Management (BLM), decision of May 14, 1981, which returned without recording the notice of location for the Ranch Challenge #10 mining claim because the notice of location had not been filed with BLM within 90 days after the date of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b). The mining claim was declared abandoned and void.

The mining claim was located November 14, 1980, and recorded in the records of Yavapai County, Arizona, on November 28, 1980. The copy of the notice of location was received by BLM for recordation on May 11, 1981, nearly 6 months after the claim was located.

Appellant argues that he mailed his location notice to BLM timely, and that any delay was caused by the Postal Service.

However, examination of the envelope in which the notice of location was transmitted to BLM reflects a postmark indicating it was mailed from Tampa, Florida, on May 7, 1981.

Regulations implementing section 314, FLPMA, supra, are contained in 43 CFR Subpart 3833. Section 3833.1-2(b) requires that, for mining claims located after October 21, 1976, a copy of the official record of the notice of location must be filed in the proper office of BLM within 90 days following the date of location. "Filed" means being received and date stamped by BLM. 43 CFR 3833.1. Section 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). It is axiomatic that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations pertinent thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947), Brewery Hill Mining Co., 49 IBLA 197 (1980). Appellant's excuse provides no exception to the rule.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

